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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Number 213

■

GEORGE PASCONE,
Petitioner

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent

■

Petition for Writ of Certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts

JOSEPH F. RUTHERFORD
HAYDEN COVINGTON
Attorneys for Petitioners

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The statute in question is invalid and unconstitutional as construed and applied by the courts below in that it deprives petitioner of his right of freedom of press, of speech, of conscience and of his right to worship Almighty God as commanded by Him in the Bible, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution 18

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Petition for Writ of Certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts

To the SUPREME COURT OF THE UNITED STATES OF AMERICA:

The Petition of George Pascone shows to the Supreme Court of the United States as follows:

A
Summary Statement of Matters Involved

1. *Statement of Facts.*

The petitioner is one of Jehovah's witnesses and according to the undisputed evidence is an ordained minister of Jehovah God. That on May 18, 1940, near the corner of

Washington Street and Court Street in the City of Boston, he stood on foot near the curb of the sidewalk with a canvas bag or sack, containing literature, slung over his shoulder, and was there engaged in the distribution of the magazines entitled "The Watchtower" and "Consolation" and the booklet "Refugees", copies of which were introduced in evidence.

The contents of this literature related exclusively to explanation of how prophecies of Holy Writ recorded centuries ago are now being fulfilled; of how, according to the Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy Satan and his entire organization, consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon; which destruction shall be immediately followed by continuing growth and expansion of God's Kingdom throughout the entire earth, to bring everlasting peace, joy, life, prosperity and happiness to all survivors and eventually also to many who have died in centuries past and who shall be resurrected to live upon earth. The contents, in part, are admittedly an attack upon religion as practiced today and at all times since man has been upon earth, but at the same time such literature's contents clearly set forth the true distinction between all religion and the true worship or service of Almighty God, thereby exposing religion as a snare and a racket of the very worst kind, and that religion is in no way related to or a part of the true worship of Almighty God. (See Exhibits and inside front cover of "The Watchtower".)

Pascone's method of distribution was to hold the literature in his hand so as to make same visible to the passers-by. To assist him in the distribution of these pub-

lications he also held placards, on one side of which was printed the slogan:

"Consolation Dares to Print the Truth Exposing Hypocritical Rackets. 5c per copy"

and on the other side the following slogan:

"Exposing Un-American Activities"

He alternately turned the sign so as to make both slogans visible to passers-by.

The petitioner would ask each prospect who stopped to contribute five cents for the publications, and if the person taking the publication was unable or unwilling to pay five cents, the publication was given free upon the promise that the person receiving it would read it. The petitioner testified that no profit is made by the distribution of this literature and that he distributed the literature for the sole purpose of "preaching" or promulgating the beliefs of Jehovah's witnesses as to the contents of the Bible and that the literature was the revealed word of God. (R. 1-3)

Petitioner admitted having received five cents from a passer-by in exchange for the magazine "Consolation". The arresting officer Gallagher testified that he asked the petitioner if he had a permit and received the reply, "No, I do not need one." (R. 1)

The petitioner was thereupon arrested and charged by complaint Number 265 with violating Acts of 1907, Chapter 584, and Acts of 1909, Chapter 329, of the General Laws of the Commonwealth of Massachusetts regulating the use of streets of the City of Boston by requiring permits for peddlers or persons selling articles of merchandise upon the streets of that city, which said law is here drawn in question. The petitioner was also charged by another complaint, Number 264, with violating Chapter 39,

Section 37, Ordinance of the City of Boston prohibiting the use of signs on the streets.

Upon a trial June 4, 1940, in the Boston Municipal Court the petitioner duly filed and presented his motion to dismiss, which was overruled by the court, and he was convicted of both charges and fined on June 4, 1940. (R. 4-11)

In due time, manner and form, the petitioner appealed from said convictions separately to the Superior Court of Suffolk County. (R. 10)

Petitioner in Superior Court waived a jury and on October 11, 1940, the separate complaints were tried de novo and together, before Justice Williams, with consent of the parties. (R. 7, 11) Thereupon the cases were taken under advisement by Justice Williams, and on October 24, 1940, he rendered a judgment overruling the petitioner's motion to dismiss and finding the petitioner guilty. (R. 7, 11) On October 26, 1940, in each of the cases the petitioner filed separate bill of exceptions; but thereafter on November 7, 1940, on motion duly made he was allowed to file a consolidated bill of exceptions. (R. 4, 8, 11)

By motion said consolidated bill of exceptions duly filed and case ordered on November 7, 1940, transferred to the Supreme Judicial Court for determination of the questions. (R. 8, 11)

Said appeal came on for argument before the Supreme Judicial Court and on April 5, 1941, that court wrote an opinion (R. 12-17) and rendered a judgment reversing the conviction under the complaint charging a violation of the ordinance prohibiting use of signs on the streets without a permit and holding said ordinance unconstitutional. In the same opinion the court, however, held that the statute prohibiting the use of the streets for the sale of merchandise without a permit as applied to the facts was valid and not unconstitutional and did not deprive petitioner of his rights of freedom of speech, press and worship of Almighty God contrary to the Fourteenth

Amendment to the United States Constitution. (R. 14-17) The court thereupon rendered judgment on April 5, 1941, affirming the conviction under complaint Number 265.

2. *Statute here drawn in question.*

Acts of 1907, Chapter 584, as amended by Acts of 1909, Chapter 329, reads as follows:

"AN ACT RELATIVE TO THE USE OF PUBLIC STREETS IN THE CITY OF BOSTON FOR THE STORAGE AND SALE OF MERCHANDISE:

"Be it enacted, etc., as follows:

"SECTION 1. The board of street commissioners of the city of Boston may issue, under the conditions hereinafter provided and under rules of its own not inconsistent herewith, licenses for the use of specified parts of public streets in said city for the storage and sale of merchandise.

"SECTION 2. A person seeking such a license shall file with said board a written application therefor, stating his name, age, occupation, residence and place of business, if any, and whether or not he is a citizen of the United States or has declared his intention to become such. He shall describe accurately in writing, by plan or otherwise, the location, the shape and the dimensions of the space which he desires to occupy, the movable structures which he proposes to use, and the kinds of merchandise which he wishes to store and to sell. He shall submit as part of his application the written consent to the issuance of the said license on the part of the owner or owners of the premises in front of which he desires to carry on business and of the tenants, of the ground floor of such

premises, or in lieu thereof the written consent of the duly authorized agent or agents of such owners and tenants. When the privilege for which a license is asked is to be exercised in front of premises owned by the City of Boston, the owner's consent herein provided for may be given by the department having charge of said premises. An application from a firm or a corporation shall be made by such partners or officers and under such further conditions as the board shall determine, and every partner or officer so designated shall give concerning himself the information as to age, occupation, citizenship, residence and place of business which is required of an individual applicant.

"SECTION 3. The application shall be sent by the board of street commissioners to the police commissioner of the city of Boston, with a request for a report thereon. It shall be the duty of said police commissioner forthwith to examine in person or by means of his subordinates the location for which the license is asked, with particular reference to the effect of its use as desired upon the free passage of vehicles and of foot passengers and upon the maintenance of public order. In his report to the board of street commissioners, which shall be made as soon as practicable, he may certify his approval or his disapproval, or his approval conditional upon amendments to be made in the application as affecting the precise location, its area or the kinds of merchandise to be stored and sold thereon.

"SECTION 4. Should the board of street commissioners and the police commissioner agree as to the propriety of issuing a license, the authority for further action shall be vested in said board; but no license shall become effective until twenty-four hours

after a copy thereof has been delivered to the police commissioner.

"SECTION 5. A license issued by the board of street commissioners may be for one or more week days in each week, for such hours daily as it shall in each case determine, and for any period not exceeding twelve months. It may be renewed on an application conforming to the conditions and in accordance with the procedure prescribed in sections two, three and four of this act. It may be suspended or revoked for any reason which said board shall consider sufficient.

"SECTION 6. For each license issued and for each renewal thereof the board of street commissioners shall charge and collect in advance a fee of not less than five dollars nor more than one hundred dollars, according to its estimate of the value of the privilege granted, the receipt of which fee shall be certified on the face of the license. It may make and collect an additional charge as rent whenever the licensee is not the principal tenant of the ground floor of the premises in front of which the location is granted; or whenever such tenant is the licensee but carries on in the location for which the license is issued a business which in the manner of its conduct or in the character of the merchandise which is sold differs materially from the business in which he is mainly engaged at that place.

"SECTION 7. The board of street commissioners shall cause to be kept at its office full and accurate records of its doings under this act, open to the public under reasonable restrictions, and at all times to the mayor of the city or to such persons as he may designate. Separate accounts shall be kept of moneys

received from licenses and from rentals derived from the use of parts of the public streets. Employees of the board entrusted with the receipt or the custody of such moneys shall be required to give bonds for the faithful performance of their duties to such amount in each case and of such character as the board shall determine. Moneys received under the provisions of this act shall be paid over to the city collector weekly, or more frequently, with a statement in detail of the sources from which they were derived; and the collector shall give his receipt therefor. The board shall include in its annual report a reasonable summary of its doings under the authority of this act.

"SECTION 8. Requirements and prohibitions contained in this act or elsewhere to the contrary notwithstanding, it shall be lawful to occupy without license or fee places in the streets, not including sidewalks, within the limits of Faneuil Hall Market, as the same are or may be defined in the ordinances of the city of Boston, and other market limits added under authority of chapter three hundred and seventy-six of the acts of the year eighteen hundred and ninety-six, for the sale from wagons or other vehicles of fresh provisions and perishable produce; *provided,* that the same are the product of the farm of the person offering them for sale, or of a farm within ten miles of the residence of such person; or are to be sold at wholesale only by the party offering them for sale on commission, for, or as agent for, some person or persons not residing or having a usual place of business within eight miles of said market; or are meats to be sold at wholesale only by the person who slaughtered the animals of which the same were a part. Such sales shall be lawful only on days on which Faneuil Hall Market is open. Nothing contained in this section shall be construed to repeal or prevent reasonable rules of

police, needful for the decorum, convenience and good order of the market, and of those who buy and sell therein.

"SECTION 9. The police commissioner of the city of Boston may designate from time to time certain streets, or parts of streets, or sections of the city wherein, and not elsewhere in the city, it shall be lawful on the days and within the hours specified by him, and under such general rules as he shall make, for any hawker or pedler, without the license provided for in this act, to stop or stand for the purpose of selling merchandise: *provided,* that such hawkers or pedlers carry on their business in conformity with the laws of the Commonwealth, the ordinances of the city, and the regulations of the board of aldermen and of the board of health of the city of Boston, now, or hereafter enacted and not inconsistent herewith.

"SECTION 10. A person who uses or occupies a part of a public street in the city of Boston, otherwise than according to the provisions of this act, for the purchase, sale, storage or display of merchandise or other articles except materials or appliances used or to be used for public purposes or for building operations under authority or license lawfully conferred or issued by or under an ordinance of the city of Boston, now in existence or hereafter enacted, shall be subject to a fine not exceeding twenty dollars for the first offence and not exceeding one hundred dollars for each subsequent offence, and should such person be unknown to the public officer witnessing such use or occupation he may be arrested by the officer without a warrant.

"SECTION 11. Chapter 211 of the Act of the year 1859, Chapter 152 of the Act of the year 1860 and all other acts, ordinances and regulations are hereby repealed and annulled."

3. *Substantial Federal Questions Presented.*

By motion to dismiss duly filed in the Municipal Court, petitioner raised the Federal questions here presented, asserting the statute to be in violation of the Fourteenth Amendment to the United States Constitution in that the statute as construed and applied denied and deprived the petitioner of his right of freedom of speech, press and worship of Almighty God contrary to the aforesaid amendment to the Constitution. (R. 6, 8-10)

The said Municipal Court duly considered and passed upon such questions and specifically held that the statute was applicable and that petitioner was not denied his rights of freedom of speech, of press and of worship of Almighty God. (R. 9)

At the close of all the evidence on the trial de novo in the Superior Court before Justice Harold P. Williams on October 11, 1940, the petitioner duly filed in writing his motion to dismiss the complaints on the grounds that the ordinances and statutes in question under which the said complaints had been brought had no application to the sale, distribution, or display of religious literature and material, and that so far as said ordinances and statutes purport to include the sale, distribution or display of religious literature and material they are invalid, void and unconstitutional in that they deprive the petitioner of rights of speech, press and worship guaranteed under the Fourteenth Amendment to the United States Constitution. (R. 3, 4) The court denied the motion to dismiss and held that the ordinances and statutes were valid and that as construed and applied did not deny the petitioner his aforesaid rights under the Fourteenth Amendment to the United States Constitution. (R. 3)

These questions were each preserved by said consolidated bill of exceptions and thereafter duly presented to the Supreme Judicial Court for determination, which said Supreme Judicial Court specifically overruled each of such contentions urged by petitioner and specifically held that the statute was applicable and that petitioner was not denied his rights of freedom of speech, of press and of worship of Almighty God. (R. 12-17 [Opinion])

Therefore there are presented for review substantial Federal questions to this court as follows:

Is the statute in question as construed and applied by the court below violative of the Fourteenth Amendment to the United States Constitution in that it abridges and denies petitioner's rights of freedom of speech, of press and of worship of Almighty God secured and included within the "due process" clause of the Fourteenth Amendment?

B

Reasons Relied on for Allowance of Writ

The questions presented are of national importance and seriously affect the fundamental personal and civil rights of every person within the United States. The Massachusetts Supreme Judicial Court has rendered a decision on an important Federal question in a way which is in conflict with applicable decisions of this Court and has radically and so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision to halt the same.

The effect of the decision of the court below is to *amend* the Constitution of the United States in a manner contrary to the law and reasoning expressed in the opinions of this Court.

The holding of the Supreme Judicial Court to the effect that the preaching of the gospel of God's Kingdom through

distribution of printed literature for which *contributions were received* when done on the *streets* of Boston does not come within the Constitutional guarantees has the effect of removing Constitutional protection from persons in Boston. Such is a new theory which is entirely foreign to American life, which should be removed and eradicated by this Court before it reaches more devastating consequences. The court below held that the guarantee of freedom of the press does not extend to "sale" of printed information and opinion, i.e., that if money was accepted for the literature distributed such transaction took the matter beyond the reach of the Fourteenth Amendment to the United States Constitution. This identical contention was made by the Supreme Court of Errors of the State of Connecticut in the *Cantwell* case, 310 U. S. 296, which was expressly rejected as "foreign" by this Court.

Petitioner was engaged in the circulation of printed matter containing information about the Kingdom of Almighty God which is shortly to be established on the earth and also containing Bible explanations of present conditions of distress and perplexity prevalent in the earth. There is no distinction or difference between this case and the cases of *Schneider* v. *Town of Irvington,* 308 U. S. 147, *Lovell* v. *Griffin,* 303 U. S. 444, and *Cantwell* v. *Connecticut,* supra, all of which announce the Constitutional guarantee as to the activity of Jehovah's witnesses.

Another reason relied upon for the allowance of the writ is the fact that the petitioner is an ordained minister of the Gospel of the Kingdom of Almighty God and as such minister he does not come within the provisions of the statute because he preached by publicly distributing literature on the streets concerning these matters and from some who took literature he received contributions to aid in printing and distributing more like literature.

The activity of preaching the Gospel in this manner cannot be regulated by permit from the municipality or state even when carried on upon the streets; because the

streets have been held, from time immemorial, as the natural and proper place for the dissemination of information and opinion on such matters as this. (*Schneider* v. *Irvington,* supra) And furthermore, to permit regulation of such activity is in effect to establish a state religion.

Wherefore your petitioner prays that this Court issue a writ of certiorari to the Supreme Judicial Court for the Commonwealth of Massachusetts, directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the decree of the court be reversed and that your petitioner may have such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

GEORGE PASCONE,

Petitioner

By

JOSEPH F. RUTHERFORD
HAYDEN COVINGTON

Attorneys for Petitioner